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TAGS: [ECON](#) [ETRD](#) [PREL](#) [PGOV](#) [CH](#) [HK](#)
SUBJECT: COMPETITION LAW DEBATE AHEAD; LIKELY FOCUS TO BE
ANTI-COMPETITIVE BEHAVIOR, NOT BREAK-UP OF DOMINANT PLAYERS

REF: 05 HONG KONG 3765

Classified By: Deputy Principal Officer Marlene Sakaue; Reasons: 1.4 (b
/d)

SUMMARY/COMMENT

1. (C) On May 8, the Chairman of Hong Kong's Competition Review Committee told the Deputy Principal Officer (DPO) that his group's report on whether Hong Kong needs a competition law should be completed in mid-June and made public in early July. The committee's present inclination is to assess a need for a competition law focused on anti-competitive behaviors like price collusion rather than to target market dominance. Two key recommendations would be that the scope of the law not be sector-specific and that an existing competition advisory body be made into a formal legal entity of the Hong Kong Government (HKG). The report will be followed by a period of public consultation. The widespread annoyance here at high prices in the energy and consumer product sectors, dominated by conglomerates, along with a robust debate underway about Hong Kong's ability to remain competitive as part of a rising China, is setting the stage for an energetic and emotional public discussion once the committee's report is released. Recent Legco activity suggests that the debate over a competition law is likely to pit directly elected legislators against those who represent functional constituencies. END SUMMARY

BASIS FOR PRESENT FOCUS ON COMPETITION LAW

2. (U) Hong Kong is perhaps alone among advanced economies in lacking a comprehensive competition law. There is sector-specific competition policy, and it is particularly effective in the area of telecommunications. A Competition Advisory Group (COMPAG) has issued voluntary competition guidelines but has no power of investigation.

3. (SBU) There is widespread sentiment here that market dominance and price collusion force consumers to pay unjustified premiums for day-to-day expenses such as: housing, electricity, basic foodstuffs, gasoline, laundry, and vitamins. There are no "big box" stores in Hong Kong, although French retailer Carrefour tried to break in a few years ago. Carrefour's inability to sustain operations was widely attributed to the existing 70 percent market concentration for groceries enjoyed by Wellcome (a Li Ka-shing holding) and Park-n-Shop (a Jardines holding). Wholesalers reportedly pressured Carrefour not to undercut

the competition and threatened to withhold supplies from the firm's stores. More broadly, it has been argued that Hong Kong's overall competitiveness is compromised by small groups of companies earning excess returns at the expense of other firms and consumers.

NEW CHIEF EXECUTIVE, NEW FOCUS

14. (C) When Chief Executive (CE) Donald Tsang took over in March 2005, he faced a public and media that were increasingly focused on questions of business-government collusion. Shortly after Tsang became CE, Financial Secretary Henry Tang created a Competition Policy Review

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Committee to assess the need for a comprehensive competition law. Per reftel, we were told by one of the committee members that although Tsang was no fan of a such a law, he was far more flexible and politically savvy than his predecessor and would not fail to realize that the political benefits of passing such a law made it a no-brainer. Our contact said that the HKG could use a competition law as a shield against increasingly strident allegations that it is in bed with leading business tycoons.

REPORT LIKELY TO PUSH COMPETITION LAW

15. (C) On May 8, the Chairman of the Competition Review Committee, Christopher Cheng, told the DPO that the long-awaited review should be finished in mid-June and made public no later than early July. Given strong opposition in many business quarters to a competition law, Cheng gave credit to Financial Secretary Tang for taking the initiative in addressing this difficult issue. When the Chief Executive

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included the competition law question in his October policy address, Cheng's review received a further boost. After holding a wide range of interviews, including a quietly conducted seminar with foreign experts invited to Hong Kong, the overall sentiment of committee members is that Hong Kong firms, market dominance is not a problem in itself)- provided they do not use this dominance to carry out unfair practices. Therefore, the committee is inclined to recommend the need for a law whose goal would clearly not be to go after large companies, but instead create new powers in the HKG to take on specific behaviors deemed anti-competitive, such as price collusion.

16. (C) Cheng envisions a competition law that is not sector specific. COMPAG would be turned into a formal HKG entity with limited powers to look into anti-competitive behavior. This body would "not be a bunch of bureaucrats checking up on all of our companies." Any sanctions levied would be strictly civil in nature.

17. (C) Cheng said that after the committee's report is issued, there will be a period of public consultation about the specifics of any new proposal for a competition law. One goal of this exercise would be "to inject grass-roots sentiment into the process and avoid having special interests write the law."

ATTITUDES IN FLUX

18. (C) Cheng noted liberalizing views in the business and political communities with regard to a competition law but pointed out opposition in some quarters (e.g., Chinese Manufacturers Association) based on two arguments: small- and medium-sized enterprises would be burdened by further regulation and competition policy is better pursued on a sector specific basis. The Federation of Hong Kong Industries, for example, argued on May 10 for a sector

specific approach, although comments from Deputy Chairman Cliff Sun appeared to break new ground by suggesting acceptance of a stronger competition watchdog role for COMPAG. Also on May 10, the Civic Party's Ronny Tong called for a fair competition law and establishment of an independent competition authority with investigatory and adjudicative powers. Previously, in 2005, the Hong Kong General Chamber of Commerce (HKGCC) had relaxed its position somewhat by releasing a report that did not reject the idea of a general competition law in the long run, even describing what such a law should look like, i.e., it ought to cover all sectors (to avoid a hodge-podge of sector specific rules and bureaucracies) and be administered by a small competition agency with an appeal board and oversight body composed of business sector and consumer body representatives. Earlier this year, however, HKGCC Chairman David Eldon published an opinion piece in the organization's monthly bulletin making the case for strengthening existing pro-competition institutions and suggesting that if there is to be a competition law, it should be minimalist.

LOOK FOR AN ENERGETIC DEBATE

19. (C) The follow-on dialogue among legislators, the business community, and the public is likely to be lively. Just last week, on May 3, legislators rejected a motion calling for a comprehensive competition law. Their five-hour debate ended with functional constituency legislators rejecting the motion but directly elected legislators overwhelmingly in favor. Given continued focus in Hong Kong on business-government collusion issues as well as an ongoing public discussion about competitiveness vis-a-vis the mainland, the occasion of Cheng's report is likely to draw all sides into an emotional discussion. At issue will be legislation that for many symbolizes a need in Hong Kong to build a fairer society and attain a more secure place in the global economy by increasing competition and reducing favoritism towards what are seen as excessively dominant business conglomerates.

Cunningham